MATTER OF M-G-A-R-

DATE: SEPT. 7, 2016

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a high school chemistry teacher, seeks classification as a member of the professions holding an advanced degree. *See* section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). In addition, the Petitioner seeks a national interest waiver of the job offer requirement that is normally attached to this classification. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. §1153(b)(2)(B)(i). This discretionary waiver allows U.S. Citizenship and Immigration Services (USCIS) to provide an exemption from the requirement of a job offer, and thus a labor certification, when it serves the national interest to do so.

The Director, Texas Service Center, denied the petition, concluding that the Petitioner did not establish that her work will be national in scope or that she will benefit the national interest to a greater extent than an available U.S. worker with the same qualifications.

The matter is now before us on appeal. The Petitioner contends that her case should be approved to further President Obama's goals in the fields of science, technology, engineering, and mathematics (STEM).

Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification normally requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –

> (A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
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> (B) Waiver of Job Offer –
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> (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.[1]

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise...." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

A supplementary notice regarding the regulations implementing the Immigration Act of 1990, P.L. 101-649, 104 Stat. 4978 (Nov. 29, 1990) (IMMACT90), published at 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991), states, in pertinent part:

> The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dep't of Transp., 22 I&N Dec. 215, 217-18 (Act. Assoc. Comm'r 1998) (*NYSDOT*), set forth several factors which must be considered when evaluating a request for a national interest waiver. First, a petitioner must demonstrate that he or she seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, a petitioner must show that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that he or she will serve

[1] Pursuant to section 1517 of the Homeland Security Act of 2002 ("HSA"), Pub. L. No. 107-296, 116 Stat. 2135, 2311 (codified at 6 U.S.C. § 557 (2012)), any reference to the Attorney General in a provision of the Act describing functions that were transferred from the Attorney General or other Department of Justice official to the Department of Homeland Security by the HSA "shall be deemed to refer to the Secretary" of Homeland Security. *See also* 6 U.S.C. § 542 note (2012); 8 U.S.C. § 1551 note (2012).

the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

While the national interest waiver hinges on prospective national benefit, a petitioner must demonstrate that his or her past record justifies projections of future benefit to the national interest. *Id.* at 219. A petitioner's assurance that he or she will, in the future, serve the national interest cannot suffice to establish prospective national benefit. Furthermore, eligibility for the waiver must rest with the petitioner's own qualifications rather than with the position sought. Assertions regarding the overall importance of a petitioner's area of expertise are insufficient to show eligibility for a national interest waiver. *Id.* at 220. At issue is whether the Petitioner's contributions in the field are of such significance that she merits the special benefit of a national interest waiver, a benefit separate and distinct from the visa classification she seeks. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6.

II. ANALYSIS

The Petitioner has established that she is a member of the professions holding an advanced degree and that her work as a teacher is in an area of substantial intrinsic merit. It remains, then, to determine whether the proposed benefits of the Petitioner's work will be national in scope and whether she will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

At the time of filing the Form I-140, Immigrant Petition for Alien Worker, the Petitioner was employed as a high school chemistry teacher for the [redacted] Prior to that, she taught in Florida for 4 years and the Philippines for 9 years. In support of the Form I-140, the Petitioner submitted various documents, including copies of her academic credentials, training certificates, STEM-related articles, and letters from colleagues.

Upon review of the submitted information, the Director issued a request for evidence (RFE), finding that the record did not establish that the Petitioner's "proposed employment is national in scope" or that "the national interest would be adversely affected if a labor certification were required." In response, the Petitioner provided additional information, including materials regarding the importance of national education goals with regard to STEM fields. The Director denied the petition finding that she had not overcome the deficiencies articulated in the RFE and concluding that she had not met the second and third prongs of the *NYSDOT* analysis.

On appeal, the Petitioner argues that she "exerts influence well beyond her specific classroom or school" and that "the ripples extend to the county-wide school district and beyond." The brief also states that she:

> [P]lays a significant role in the current planning of and integration of new ideas into [the] science curriculum in [redacted] (Maryland) to such a degree that the ability of President Obama's stated mission and goals to succeed and reach its

> benchmarks for the STEM program, particularly the outreach to underserved and minority dominated school districts, hangs very much in the balance.

The record does not include sufficient documentation to support such statements about the Petitioner's role and contributions in her school district.[2] Regardless, she has not established that work benefitting an individual school district is national in scope. In addition, while national STEM initiatives address the intrinsic merit of education, they do not exempt educators from satisfying the *NYSDOT* analytical framework, and do not indicate that one teacher will have an impact at the national level. As USCIS does not have discretion to ignore binding precedent under 8 C.F.R. § 103.3(c), the Petitioner's eligibility must be determined according to the framework set forth in *NYSDOT*.

A review of the record does not reveal that the work of the Petitioner as an individual teacher significantly contributes to national educational goals or will further those objectives on a nationally significant level. The submitted documentation, including reference letters, attests to the Petitioner's dedication to her students and continuing professional development. Colleagues and acquaintances describe her as "a dynamic educator" and "a true team player" and commend her "teaching expertise" and "classroom management skills." However, the evidence does not indicate that the proposed benefits of her work will extend beyond her own students. This finding is consistent with *NYSDOT*, which cited an elementary school teacher as an example of a meritorious occupation that would lack the requisite national scope to establish eligibility.

Under the third prong of the *NYSDOT* analysis, a petitioner must demonstrate that he or she will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. A petitioner must have a past record that "justifies projections of future benefit to the national interest" by exhibiting "some degree of influence on the field as a whole." *Id.* at 219, n. 6. The record confirms that the Petitioner is a "highly-qualified" and well-respected teacher with a lengthy career. The materials do not, however, establish that her work has or will result in significant benefits beyond her own classroom. Without evidence demonstrating that her work has affected the field as a whole, length of employment and employment in a beneficial occupation such as a teacher does not qualify the Petitioner for the national interest waiver.

III. CONCLUSION

A plain reading of the statute indicates that it was not the intent of Congress that every advanced degree professional or individual of exceptional ability should be exempt from the requirement of a job offer based on national interest. For the reasons discussed above, we find the record insufficient

[2] Statements made without supporting documentation are of limited probative value and are not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

to confirm that the scope of the Petitioner's proposed work or her past record of achievement is at a level sufficient to waive the job offer requirement which, by law, normally attaches to the visa classification sought by the Petitioner. While a petitioner need not demonstrate notoriety on the scale of national acclaim, the national interest waiver contemplates that his or her influence be national in scope. *NYSDOT*, 22 I&N Dec. at 217, n.3. Considering the record, the Petitioner has not established by a preponderance of the evidence that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

We will dismiss the appeal for the above stated reasons. In visa petition proceedings, it is the Petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the Petitioner has not met that burden.

ORDER: The appeal is dismissed.

Cite as *Matter of M-G-A-R-*, ID# 77825 (AAO Sept. 7, 2016)